))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4581 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAFAR MOHMADHUSEN MIYANA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4581 of 2001

MS DR KACHHAVAH for Petitioner No. 1

MR S.S.PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985

('the Act' for short), Commissioner of Police, Ahmedabad City, Ahmedabad, vide order dated April 8, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2(c) of the Act as 2 cases under IPC are registered against the petitioner which are pending trial and statements of two anonymous witnesses are recorded and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, power under Section 9(2) of the Act is exercised by the detaining authority by not disclosing the identity of those witnesses and thereby detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue an appropriate writ, order or direction quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. D.R.Kuchhwah learned advocate for the petitioner has restricted her arguments to the effect that so far as two cases registered against the petitioner are concerned, they do not reflect the disturbance of the public order, they only reflects the disturbance of law and order situation. In support of her aforesaid submission, she drew the attention of this Court to the contents of all the FIRs lodged against the petitioner. On having perusal of the FIRs, it can be said that offences registered against the petitioner are only breach of the law and order situation. Therefore, order recorded by the detaining authority suffers from vices of non-application of mind which according to her is liable to be quashed and set aside by allowing the petition and setting the petitioner at liberty. Besides this, the privilege claimed under Section 9(2) of the Act cannot be called genuine in the absence of affidavit in reply filed on behalf of the detaining authority and therefore, order of detention stands vitiated.

5. Mr. S.S.Patel, learned AGP appeared on behalf the respondent State and has contested the petition by filing affidavit in reply sworn by P.C.Pandey, Commissioner of Police, Ahmedabad City, Ahmedabad. He, however, does not dispute the factual aspect with regard

to the fact that the offences registered against the petitioner reflect the disturbance of the law and order only and not the disturbance of public order. He, therefore, urged to pass appropriate order in light of the settled principles laid down by this Court.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. "Public Order" is an expression of wide connotation and signifies that state of tranquillity prevailing among the members of a political society as a result of the internal regulations enforced by the Government which they have instituted. "Public Order" is synonymous with public safety and tranquillity. It is the absence of disorder involving breaches of local significance in contradistinction to to national upheavals, such as revolution, civil strife, war affecting the security of the State. The overlap of public order and public tranquillity is only partial. the terms are not always synonymous. The latter is a much wider expression and takes in many things which cannot be described as public disorder. The words 'public order' and 'public tranquillity' overlap to a certain extent but there are matters which disturb public tranquillity without being a disturbance of public order. In short, it is not the same as maintenance of law and order. Maintenance of law and order means the prevention of disorders of comparatively lesser gravity and of local significance. Individual actions which do not disturb the even tempo of life in the society in the society and community or do not cause apprehension in the minds of the residents of the locality in regard to maintenance of public order.

8. Keeping in view the aforesaid aspect of distinction between the breach of the public order and breach of law and order situation, if we examine all the FIRs lodged against the present petitioner, it cannot be termed as breach of the public order, it only reflects breach of the law and order situation. The detaining authority has considered the contents of the said FIRs as the breach of the public order which is erroneous and, therefore, order of detention passed by the detaining authority cannot be called genuine and therefore, the order of detention stands vitiated and the petition deserves to be allowed by quashing and setting the impugned order of detention and setting the petitioner at liberty forthwith.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated April 8, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*